

From: Peter Blair <pblair@just-zero.org>
Sent: Wednesday, October 5, 2022 8:49 AM
To: Gauthier, Benjamin
Cc: Roethlein, Mia
Subject: RE: Next meeting of the Role of Depackagers in Managing Food Waste Stakeholder Group this Wednesday October 5th 9:30am - 11:30am
Attachments: Just Zero - Analysis of the Applicability of the Vermont Food Residual Management Hierarchy (Oct. 5. 2022).pdf

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Ben,

Thanks so much for confirming my role at this morning's meeting. I'll be participating virtually. Also, I took the liberty of drafting a memorandum that summarizes my interpretation of how the hierarchy functions as a portion of the Universal Recycling Law. The memo is attached. I would appreciate it if the memo could be circulated to the stakeholder groups and made part of the record.

Best,
Peter

Peter Blair (he/him)

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From: Gauthier, Benjamin <Benjamin.Gauthier@vermont.gov>
Sent: Tuesday, October 4, 2022 2:44 PM
To: Peter Blair <pblair@just-zero.org>
Subject: Next meeting of the Role of Depackagers in Managing Food Waste Stakeholder Group this Wednesday October 5th 9:30am - 11:30am

Hi Peter,

Last week, you volunteered to speak about the food residual management hierarchy at the third Depackager Stakeholder Group meeting. I apologize for not reaching out sooner, but the details for the meeting are listed below. Feel free to attend in person or remotely. The agenda was finalized by the group yesterday and can be found at the following link: Here is the link to the final agenda: https://dec.vermont.gov/sites/dec/files/wmp/SolidWaste/Documents/Universal-Recycling/DSG.FINAL_Act170DepackagerStakeholderGroup3rdMeetingAgenda.pdf

The third meeting of the Role of Depackagers in Managing Food Waste Stakeholder Group is scheduled for Wednesday October 5th 9:30am – 11:30am at the National Life campus, Davis Building, Catamount Room. Public participation will also be available virtually via Microsoft Teams(see below) link.

Please contact Mia Roethlein at mia.roethlein@vermont.gov if you wish to attend in person so that space accommodations can be made.

[Act 170](#) that passed by VT Legislature in 2022 required a collaborative stakeholder process to make recommendations on the proper management of packaged organic materials and food waste in Vermont.

The agendas, minutes, information and documents used and prepared by the Depackager Stakeholder Group are posted on this [webpage](#).

Please also save these dates for future meetings of this group-November 9th 9:30- 11:30am and November 30th 9:30 – 11:30am
Feel free to let me know if you need anything from me. Thanks for your participation. I look forward to the discussion tomorrow.

Microsoft Teams meeting

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The Agency of Natural Resources supports telework, and there are times when I may be working from another office location. I am available to connect by phone and email. I am also available to connect in-person upon request.



MEMORANDUM

DATE: October 5, 2022

TO: Vermont Depackager Stakeholder Group

FROM: Peter Blair, Esq. – State Policy Director for Just Zero

RE: Legal Analysis on the Vermont Food Residuals Management Hierarchy

In 2022, the Vermont legislature passed Act 170. This law requires the newly formed Vermont Depackager Stakeholder Group to make a recommendation as to whether the Food Residuals Management Hierarchy in 10 V.S.A. §6605(k) should apply to all generators of organic waste.¹ To answer this question, it is important to first understand what 10 V.S.A. § 6605(k) requires.

There are currently two competing interpretations regarding the purpose and function of the Food Residuals Management Hierarchy. One interpretation – which is supported by the Agency of Natural Resources – views the hierarchy as a menu of option that generators can reference when making decisions regarding how they choose to manage their food residuals.² This interpretation does not see the hierarchy as an enforceable component of the law. Rather, it sees the hierarchy as an unenforceable policy statement. The alternative interpretation views the hierarchy as a strict legislative command. Under this interpretation generators are required to identify the highest and best uses available to them according to the hierarchy and give preference to those management methods before moving before moving down the hierarchy to lower, less beneficial management methods.

When there are conflicting interpretations of a statute, courts will undergo a process of statutory interpretation to come to a definitive conclusion as to what is required by the law. This process is used to establish what a particular statute means so that it can be applied accurately and consistently.

Using the tools of statutory interpretation as articulated by the Vermont Supreme Court, it is apparent that when drafting and enacting the Universal Recycling Law (Act 148), the Vermont Legislature intended for the organics management hierarchy to apply to all generators. This intent is evident from the plain meaning of the statute, the legislative history of the Universal Recycling Law, and the plain language of similar statutes in other states.

¹ See, 2022 Vermont Laws No. 170 (H. 446)

² See, Vermont Agency of Natural Resource Food Residuals Management Policy (Jan. 2020).



I. Statutory Interpretation in Vermont

When interpreting statutes in Vermont, “the bedrock rule” is to “determine and give effect to the intent of the legislature.”³ Legislative intent is determined by first “examining the plain meaning of the language used in light of the statute’s legislative purpose.”⁴ If the plain language used in the statute does not conflict with the legislative purpose, then the statutory interpretation ends and the plain language prevails as the valid interpretation.⁵

However, if the plain language of the statute conflicts with the legislative intent, then the legislative intent prevails over the plain meaning.⁶ Courts will only find that the plain language of the statute conflicts with the legislative intent when the “precise wording” of the statute produces “results which are unjust, absurd, unreasonable or unintended, or conflicts with other expression of legislative intent.”⁷ During this analysis, legislative intent is derived from looking at the entirety of the law, its reason, its purpose, and its consequences.⁸ Courts will not look at the specific clause or portion of the statute in isolation.⁹ Finally, the courts will also consider the interpretation of similar statutes in other jurisdictions to assist their analysis.¹⁰

II. The Legislative Intent of 10 V.S.A. § 6605(k): The Food Residuals Management Hierarchy.

As mentioned above, the first step of statutory interpretation is to evaluate the statute’s plain meaning in the context of the overarching purpose of the law.

A. The Plain Language of 10 V.S.A § 6605(k) Supports the Interpretation that the Food Residuals Management Hierarchy Applies to All Generators.

The first step of statutory construction is to determine the plain meaning of the statute in question. Here, the plain language of section 10 V.S.A 6605(k) is unambiguous and clear. This section of the Universal Recycling Law establishes who is being regulated, what is being required of the regulated entities, and how the Food Residuals Management Hierarchy fits into the regulatory system.

As written the law requires any person who generates any amount of food residuals to either manage the residuals on-site or separate the residuals from all other forms of solid waste and

³ *Wesco, Inc. v. Sorrell*, 117 Vt. 287, 102 (2008).

⁴ *Lubinsky v. Fair Haven Zoning Bd.*, 148 Vt. 47, 49 (2002).

⁵ *Id.*

⁶ *Inst. Of Prof’l Practice, Inc. v. Town of Berlin*, 174 Vt. 535, 536 (2002).

⁷ *Lubinsky*, 148 Vt. at 50.

⁸ *Human Rights Comm’n v. Benevolent & Protective Order of Elks*, 176 Vt. 104, 125 (2003).

⁹ *Id.*

¹⁰ *Id.*



arrange for the transfer of those separated food residuals to a location that will manage the material in a manner that is consistent with the Food Residuals Management Hierarchy.¹¹

The Food Residuals Management Hierarchy requires that any food residuals collected in Vermont shall be managed according to the following priority of uses:

- (1) Reduction of the amount generated at the source;
- (2) Diversion for food consumption by humans;
- (3) Diversion for agricultural use, including consumption by animals;
- (4) Composting, land application, and digestion; and
- (5) Energy recovery¹²

The law does allow for some minor exemptions. For instance, the law allows generators to dispose of a “de minimis” amount of food residuals as solid waste.¹³ This exception is limited to generators that have establishes a separation program that includes an educational component to inform users about the importance of separating food residuals from other solid waste.¹⁴ Additionally, a previous version of the Universal Recycling Law also limited the scope of regulated generators to those that are located within 20 miles of a facility that had the capacity to accept the generators food residuals. However, this was subsequently removed from the statute.

The unambiguous language of 10 V.S.A § 6605(k) supports the interpretation that the Food Residuals Management Hierarchy applies to all generators. The language is clear. The statute explicitly requires generators that do not manage food residuals on-site to “arrange for the transfer of food residuals to a location that manages food residuals in a manner consistent with the priority uses established” in the Food Residuals Management Hierarchy.¹⁵ Further the plain language of the statute reaffirms the importance of the hierarchy when it establishes that it is the policy of the State that food residuals collected under the law will be managed according to the order of priority uses.”¹⁶

Additionally, the plain language used to define “food residuals” in 10 V.S.A. §6602(31) also indicates that the Food Residuals Hierarchy was created to be a active and enforceable component of the law and not a menu of options. The definition of food residual specifically incorporates the requirement that the material be managed in a manner consistent with the requirements of the Food Residuals Hierarchy.¹⁷ The explicit choice to reenforce the concept that food residuals must be managed in accordance with the priority of uses established in the hierarchy cannot be ignored. Instead, the plain language illustrates that this was a conscious legislative choice selected to reaffirms the binding nature of the hierarchy.

¹¹ 10 V.S.A. § 6605(k)(b).

¹² *Id.* at § 6605(k)(a).

¹³ *Id.* at § 6605(k)(b)(1).

¹⁴ *Id.*

¹⁵ *Id.* at § 6605(k)(b)(2).

¹⁶ *Id.* at §6605(k)(a).

¹⁷ 10 V.S.A. § 6602(31).



B. The Legislative History Behind the Organics Management Portions of the Universal Recycling Law Also Supports the Interpretation that the Hierarchy Applies to All Generators.

After reviewing the plain language of the statute, the rules of statutory interpretation require that the plain language be understood in the context of the overarching purpose of the law.

1. *Passage of the Universal Recycling Law in 2012*

The Universal Recycling Law was introduced in 2011.¹⁸ The bill had several interconnected purposes. It required the Agency of Natural Resources to assess the current capacity, cost, and efficiency of solid waste collection in Vermont. It also required solid waste facilities and transporters to offer collection of mandatory recyclables at no additional cost. Additionally, the bill established a prohibition on the landfilling of mandatory recyclable and leaf and yard residuals.¹⁹

In terms of the organics management components of the bill, the purpose was to require any persons producing more than two tons of source-separated organic material to separate the waste from all other forms of solid waste and arrange for it to be managed at a compost facility.²⁰ This was done to both divert food waste away from landfills and strengthen the state's composting market.

Importantly, the first version of the bill did not include the Food Residuals Management Hierarchy.²¹ It also did not include language that would slowly expand the class of covered generators.²² However, the bill was amended throughout the legislative session by both the House and the Senate. Those amendments added these portions of the law. These amendments illustrate that the intent of the legislature was not simply to keep food waste out of the landfill, but to reduce food waste, feed hungry Vermonters, and prioritize sending food residuals to facilities that utilize the most environmentally and economically beneficial diversion techniques.

The House was the first body to amend the organics management provisions of the Universal Recycling Law. The House amended the bill to create the Food Residuals Management Hierarchy. This amendment established that it is the policy of the state that all food residuals collected under the law shall be managed in accordance with the priorities established in the hierarchy. This amendment also included the language that requires all generators that do not manage food residuals on-site must arrange for the transfer food residuals to a location that

¹⁸ The Universal Recycling Law was Introduced by Representative Klein, Cheney, and Edwards in 2011 as H.485.

¹⁹ Vermont H.485 As Introduced by Representatives Klein, Cheney, and Edwards (2012).

²⁰ Vermont H.485 As Introduced by Representatives Klein, Cheney, and Edwards (2012).

²¹ *Id.*

²² *Id.*



manages the material in a manner consistent with the Food Residuals Management Hierarchy. Additionally, the House also amended the law to expand the scope of covered generators. Under the amended language, the applicability of the mandatory recycling provisions and the Food Residuals Management Hierarchy would eventually be lowered over time before becoming applicable to all Vermonters in July 2020.

The Senate both approved these amendments and chose to reaffirm the intent behind them by amending the bill to include a definition for “food residuals.” The new definition, which was approved by the House and included in the final enacted language of the law, sought to specifically incorporate the requirement that food residuals must be managed in accordance with the priorities set out in the hierarchy into the definition of food residuals.

The amendments, and their subsequent enactment into the law, demonstrates that the House and Senate clearly intended for the Food Residuals Management Hierarchy to be a central and integral component of the law. The deliberate choice to amend the bill to create the hierarchy, establish it as a policy of the state, incorporate it into the regulatory requirements of the law, and then reaffirm it in the definition of food residuals illustrates that the legislature chose the specific words in statute to carry out their intent. The legislature could have chosen to leave the bill as a mandatory organic recycling law that was silent about how food residuals should be managed. However, they did not. They deliberately chose to embed values into the system through the creation of the hierarchy.

2. Subsequent Revisions to the Universal Recycling Law

In addition to reviewing the legislative history surrounding the enactment of the Universal Recycling Law, it is also helpful to evaluate the history of subsequent amendments to the law. The legislature has revisited and amended the Universal Recycling Law twice since its initial adoption. First in 2018, and again in 2019.²³

The 2018 amendments to the Universal Recycling Law made several changes to the organics management portions of the law. This includes establishing a new requirement that solid waste haulers offering trash collection must also accept food residuals. Additionally, the legislature also made minor technical amendments to clarify what was already required by law, that beginning on July 1, 2020, all food residuals are banned from the landfill. The 2019 amendments did not address any of the organics management provisions of the Universal Recycling Law.

The legislature’s decision in 2018 to not amend the language of the Food Residual Management Hierarchy, or its applicability to all generators, reaffirms that the legislature intended for the hierarchy to be an integral portion of the law. In fact, the legislature explicitly chose not to

²³In May 2018 Senate Bill S.260 and S.285 were passed into law which made changes to Vermont’s Universal Recycling Law. In June 2019, Senate Bills S.113 and S.160 were passed into law making changes to solid waste law including Vermont’s Universal Recycling law.



change the applicability of the law. When the bill to amend the Universal Recycling Law was first introduced, it contained language which would have limited the scope of regulated entities. The language of S.285 as introduced by Senator Rodgers would have removed the portions of the law expanded the mandatory organics recycling provisions over time. This language would have limited generators to only those that produced 26 tons of food residuals or more per year. This language was removed from the law prior to its passage. This decision should be interpreted as affirming the legislature's position that the intent of 10 V.S.A. § 6605(k) was to eventually cover all generators of food waste, and have subject to the plain meaning of the law which is that all food residuals no managed on-site must be managed in accordance with the priorities set out in the hierarchy.

Additionally, the decision to not amend the organics management provisions when amending the Universal Recycling Law in 2019, also can be seen as affirming the legislature intent regarding the hierarchy. Should the legislature have desired to change the plain meaning and applicability of the Food Residuals Management Hierarchy, they would have done so.

III. Similar Legislation in Other Jurisdictions Took a Different Approach Than Vermont.

As mentioned above, when trying to interpret the meaning behind a statute, courts will also look to interpretations of similar legislation in other jurisdictions.²⁴ Currently, California, Connecticut, Massachusetts, Rhode Island, New Jersey, and New York all have mandatory organics recycling laws. Additionally, while Maine does not have a mandatory organic recycling law, the state has a Food Recovery Hierarchy which is similar to Vermont's Food Residual Management Hierarchy.

None of the other mandatory organic recycling laws have language which seeks to dictate how generators should manage their food waste. The decisions by these other state legislatures to remain silent on how food waste is managed supports the interpretation that the language enacted by the Vermont Legislature in 10 V.S.A § 6605(k) was intentional. Additionally, Maine's Food Recovery Hierarchy has language which expressly establishes that it should only be used as a guiding principle. This decision by the Maine legislature to specifically limit the scope of the Food Recovery Hierarchy establishes that without such language, the hierarchy would be binding law.

A. Every State Other Than Vermont That Has a Mandatory Organics Recycling Law Does Not Have an Organics Management Hierarchy.

California, Connecticut, Massachusetts, Rhode Island, New Jersey, and New York do not have an organics management hierarchy as part of their organics recycling laws and regulations. Instead, these laws only require that a predetermined level of generator recycle the food waste they produce, as opposed to disposing of it through landfilling or incineration. While some laws

²⁴ *Human Rights Comm'n v. Benevolent & Protective Order of Elks*, 176 Vt. 104, 125 (2003).



do either place and emphasis on food donation, none set out a list of priority diversion or recycling methods like Vermont's law does.

For instance, New York's Food Donation and Food Scrap Recycling Law requires that all designated food waste generators to separate their excess edible food for donation for human consumption to the maximum extent practicable.²⁵ Following that separation and donation, designated food waste generators are required to separate all remaining food waste from solid waste and transfer or arrange for the transfer of the source separated material to an organic recycling facility.²⁶

The decision by all these states to not include a organics management hierarchy should be viewed as intentional. Especially given that every state except Connecticut passed their organics recycling laws after Vermont.²⁷ Therefore, it can be inferred that these states understood the role the Food Residuals Management Hierarchy plays in Vermont's overarching organics management system and intentionally chose not to pursue similar legislation that mandated preference of certain management options over others.

B. Maine Has a Similar Organics Management Hierarchy and Specifically Sought to Qualify Its Applicability.

While Maine does not have a mandatory organic recycling law, it does have a version of an organics management hierarchy that is similar to Vermont's. In 2015, the Maine Legislature enacted the Food Recovery Hierarchy.²⁸ This statute established that "it is the policy of the State to support the solid waste management hierarchy in section 2101 by preventing and diverting surplus food and food scraps from land disposal or incineration in accordance with the following order of priority:

- (1) Reduction of the volume of surplus food generated at the source;
- (2) Donation of surplus food to food banks, soup kitchens, shelters and other entities that will use surplus food to feed hungry people;
- (3) Diversion of food scraps for use as animal feed;
- (4) Utilization of waste oils for rendering and fuel conversion, utilization of food scraps for digestion to recover energy, other waste utilization technologies and creation of nutrient-rich soil amendments through the composting of food scraps; and
- (5) Land disposal or incineration of food scraps."

²⁵ NY ENVIR CONSER § 27-2203

²⁶ *Id.*

²⁷ The Universal Recycling Law was passed in 2012. Connecticut passed its law in 2011 (See, C.G.S.A. § 22a-226e). Massachusetts enacted its regulations in 2013 (See, 310 CMR 19.000) Rhode Island passed its law in 2014 (See, R.I. Gen. Laws § 23-18.9-17. California also passed its law in 2014 (See, Cal.Pub.Res.Code § 42649.8) New Jersey passed its law in 2020 (N.J.S.A. 13:1E-99.122). And New York Passed its law in 201

²⁸ 38 M.R.S.A. § 2101-B(1).



While this language is nearly identical to Vermont’s Food Residual Management Hierarchy, there is one important difference. The Maine Legislature explicitly sought to clarify how the Food Recovery Hierarchy should be used. Section 2 of the statute notes that “it is the policy of the State to use the order of priority in this section... as a guiding principle in making decisions related to solid waste and organic materials management.”²⁹ The Maine Legislature’s decision to clearly define the Food Recovery Hierarchy as a “guiding principal” illustrates that the legislature felt that without this explicit language, the hierarchy might be interpreted as binding law that applies to how food waste is managed in the state. Conversely, Vermont’s failure to qualify the intent behind the Food Residual Management Hierarchy should not be seen as a mistake or failure of the legislature.

IV. The Agency of Natural Resource’s Previously Interpreted the Food Residuals Management Hierarchy as Binding to All Generators.

While not a tool of statutory construction, the Agency of Natural Resources’ previous interpretations of the Food Residuals Management Hierarchy is also important when looking to discern what is required of by the law.

As of August 2020, the Agency of Natural Resources views the hierarchy as an unenforceable menu of options. In the Policy for Managing Food Residuals, the Agency notes that “there are multiple options included in the management hierarchy for the management of food residuals rather than disposal. Generators must make arrangements to use one or more of the hierarchy options when managing their food residuals.”³⁰ The Agency further clarifies that there are multiple options in the management hierarchy for how to handle food residuals and “it is not the Agency’s role to favor one option over another.”³¹

Previously, the Agency held a different view. A draft version of the “Food Residuals and Packaged Organics Management Policy” stated that “the plain language of the statute is clear that food residuals, by definition, must be source separated from non-compostable materials at the point of generation and managed in a manner that is consistent with the priorities listed in the Food Residuals Management Hierarchy.”³² This draft policy also explicitly noted that “it is the generator’s responsibility to source separate all non-compostable materials from foo residuals at the point of generation and arrange for the transfer of food residuals materials to a facility that manages them consistently with the hierarchy.”³³

²⁹ 38 M.R.S.A. § 2101-B(2).

³⁰ Vermont Agency of Natural Resources, Policy for Managing Food Residuals Including Packaged Food Residuals (Jan. 2020).

³¹ *Id.*

³² Vermont Agency of Natural Resources, Draft Food Residual and Packaged Organics Management Policy (Aug. 2019). This draft policy has been attached to this memo as Attachment A.

³³ *Id.*



This draft version of the policy establishes that, at least at one point, the Agency felt that the Food Residuals Management Hierarchy applied to all generators.

V. Conclusion

The plain language of 10 V.S.A § 6605(k), when considering the overall purpose of the organics management sections of the Universal Recycling Law illustrates that the Vermont Legislature intended not only to bar food residuals from landfills, but to create a organics management system which prefers certain, more economically and environmentally beneficial management practices over others. This is seen from the plain language of the law which clear requires that all generators manage their food waste in accordance with the priorities set in the Food Residuals Management Hierarchy. Therefore, it is my interpretation that currently, the Food Residuals Management Hierarchy applies to all generators. Furthermore, decisions by the Agency which allow for management methods that would limit or preclude the use of food residuals by management methods higher up the hierarchy may be violating the law. Given that this is a statutory mandate, the only way to change the applicability of the Food Residual Management Hierarchy would to the amend the statute.



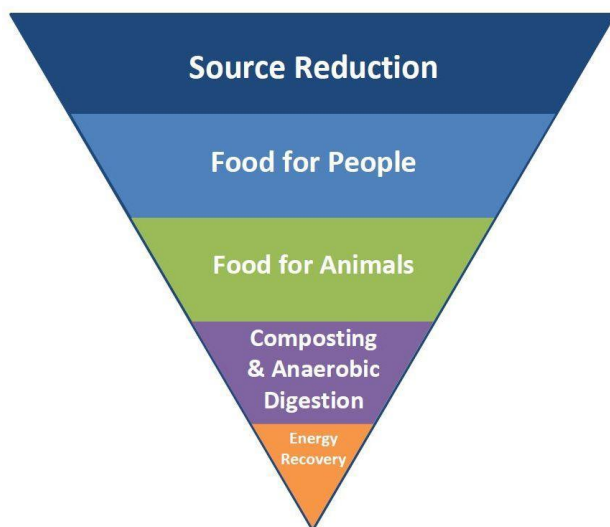
**Attachment A:
Draft Food Residual and Packaged Organics
Management Policy (Aug. 2019)**

Background:

In 2012 Vermont passed Act 148, commonly known as the Universal Recycling Law. Stakeholders, members of the Vermont Legislature and State agencies agreed to implement measures to preserve the value of specific components of Vermont's waste stream so they would be available for the highest and best use. The goal was to "close the loop", utilizing as much of the organics stream locally as possible, reducing the State's dependence on raw materials and offsetting the importation of soil enrichment alternatives.

Now that the Universal Recycling Law has had some time to unfold, we've seen markets fluctuate, economies shift, and technologies emerge. The sector is continuing to grow and evolve but the Agency of Natural Resources (Agency) wanted to take this opportunity to reiterate and clarify existing statutory requirements so that generators, haulers, and facilities alike can all work in unison to manage food residuals in accordance with the intent of the food residuals management hierarchy (10 VSA 6605k).

Vermont Food Recovery Hierarchy



Currently, statutes require the source separation of food residuals at the point of generation. Recent industry developments have encouraged the comingling of source separated organics with packaged organics at the point of generation, transporting the blend of non-compostable material and organics to a depackaging facility for treatment.

A successful food residual management system in Vermont will need to be flexible and responsive to the resource streams, the generator density and the available local infrastructure. To best support the priorities established by the Legislature in the food residuals management hierarchy and to preserve the opportunity for source separated food residuals to be utilized by the highest identified uses, the Agency has

developed this policy to maintain the purity and availability of source separated organic materials.

Policy:

After considering applicable statutes, the intent of the Universal Recycling Law (Act 148 of 2012) and evaluating the food residuals management strategies being employed across the state it is the Agency's policy that food residuals shall not be mixed with packaged organics at the point of generation. The regulatory basis supporting this policy is outlined below.

Food residuals - are defined in statute (10 V.S.A. 6602(31)) as:

"source separated and uncontaminated material that is derived from processing or discarding of food and that is recyclable, in a manner consistent with section 6605k of this title. Food residual may include preconsumer and postconsumer food scraps. "Food residual" does not mean meat and meat-related products when the food residuals are composted by a resident on site."

Source Separated – is defined in statute (10 V.S.A. 6602(32)) as:

"the separation of compostable.... materials from noncompostable....materials at the point of generation." (sections of this definition applicable to mandated recyclables removed for clarity)

The plain language of the statutes is clear that food residuals, by definition, must be source separated from non-compostable materials at the point of generation and managed in a manner consistent with the priorities listed in the food residuals management hierarchy. Mixing food residuals with packaged organics does not satisfy the source separation requirement and automatically precludes the materials from being utilized by any of the higher priority options on the hierarchy.

How this policy will apply to various stakeholders is provided below.

Applicability to Generators:

It is the generator's responsibility to source separate all non-compostable materials from organics at the point of generation and arrange for transfer of organic materials to a facility that manages them consistently with the hierarchy (see 10 V.S.A. 6605k(b)).

The growing practice of combining source separated food residuals with packaged organics by the generator conflicts with the established Universal Recycling Law requirements. The Agency recognizes that in some cases a generator may not be able to source separate large volumes of packaged organics that they generate (i.e. separating flats of expiring yogurt cups into the yogurt, the container, the foil seal, the cardboard and the plastic film). To make the best use of these resources in these scenarios, the generator may contract with a certified treatment facility to separate packaged organics on their behalf. This allowance is limited to significant volumes of packaged organics *only*.

In summary, every generator of food residuals shall have a source separated organic material stream, and some generators may elect to have a source separated organic material stream AND a distinct packaged organics stream. The two streams shall be kept separate and shall not be co-mingled.

Applicability to Haulers:

Applicability to Facilities:

Certified facilities designed to process or transfer organics shall assure that all incoming organics are managed in accordance with the established food residual hierarchy priorities through a formal organics management plan incorporated in their facility management plan. The approved organics management plan shall detail all attempts the facility will make to deliver the various organic streams to the highest use facilities. The facility shall evaluate all reasonable and acceptable options.

If a facility routinely receives deliveries of organics co-mingled with packaged organics and/or non-compostable materials the Agency shall be notified and the responsible hauler or generator's information shall be provided.

Conclusion:

The Agency is responsible for implementing the requirements of the Universal Recycling Law. To succeed, will require cooperation across the board, from households, generators, haulers and facilities. Additionally, the state-wide organics management system will need to be adaptable, sustainable, diverse and resilient. To best comply with the food residuals management hierarchy and encourage the highest use of these resources, Vermont statute and the Agency require that food residuals be source separated and managed separately from packaged organics at the point of generation.

This policy encourages edible food diversion for human consumption. It also encourages agricultural use and animal feed - replacing imported feed and synthetic fertilizers with a sustainable, locally available resource. And finally, it allows operators of anaerobic digesters and operators of compost facilities an equal opportunity at source separated food residuals.

DRAFT